

1 Justin E. Sterling, State Bar No. 249491
2 LAW OFFICES OF JUSTIN STERLING
3 Justin@SterlingDefense.com
4 15760 Ventura Blvd. Suite 700
5 Encino, CA 91436
6 Tel. (818) 995-9452/Fax. (818) 824-3533

7 Erin Darling, State Bar No. 259724
8 LAW OFFICES OF ERIN DARLING
9 Erin@ErinDarlingLaw.com
10 3435 Wilshire Blvd. Suite 2910
11 Los Angeles, CA 90010
12 Tel. (323) 736-2230

13 Attorneys for Plaintiff Dora Solares

14
15
16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 DORA SOLARES, an individual,

19 Plaintiff,

20 v.

21 RALPH DIAZ, in his individual capacity,
22 KENNETH CLARK, in his individual
23 capacity, JOSEPH BURNS, in his
24 individual, and DOES 1 TO 15, in their
25 individual capacities

26 Defendants.

27 Case No. 1:20-cv-00323-NONE-BAM

28 **AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATIONS OF
CIVIL RIGHTS UNDER 18 U.S.C. §
1983**

DEMAND FOR JURY TRIAL

29
30 **INTRODUCTION**

31 1. On or about March 7, 2019, CDCR inmate Luis Romero was transferred
32 from Mule Creek State Prison to California State Prison, Corcoran. Corcoran prison
33 officials chose to bypass the standardized administrative committee process that is
34 required before forcing one inmate to share the cell of another, and rushed to assign
35 Mr. Romero to the same cell as convicted murderer, inmate Jaime Osuna. Mr. Osuna
36 had not had a cellmate at Corcoran prior to this assignment. Corcoran officials had
37 already been put on notice that Mr. Osuna was uniquely unfit to be housed with a

1 cellmate, as he had engaged in multiple acts of violence against fellow inmates, had
2 been charged with attempted murder as a result of one such incident, and had been
3 recommended for placement in a psychiatric ward rather than a prison. On March 8,
4 2019, despite having received these warnings about Mr. Osuna, and despite taking the
5 unusual step of expediting Mr. Romero's placement, Corcoran prison officials chose to
6 bypass the standardized process and then failed to conduct regularly scheduled nightly
7 safety checks of Mr. Romero's new cell. Even after a bedsheet was visibly draped along
8 the bars inside this cell, preventing anyone outside from peering in, no Corcoran prison
9 official bothered to conduct a routine safety check during the evening of March 8,
10 2019. In the early morning hours of March 9, 2019, Corcoran officials finally
11 conducted a safety check and looked on the other side of the bedsheet. At that point,
12 Mr. Romero was found decapitated, and Mr. Osuna was found wearing a necklace
13 made of Mr. Romero's body parts.

14 **JURISDICTION AND VENUE**

15 2. This case arises under 42 U.S.C. § 1983, the Fourth, Fifth, Eighth, and
16 Fourteenth Amendments of the United States Constitution, and various state-law
17 governmental tort statutes. Jurisdiction in this Honorable Court by 28 U.S.C. §§ 1331
18 and 1343. Plaintiff's state-law claims are within the Court's supplemental jurisdiction
19 pursuant to 28 U.S.C. § 1367.

20 3. Venue is proper in Eastern District of California pursuant to 28 U.S.C. §
21 1391, as the underlying acts, omissions, injuries and related facts occurred in Kings
22 County, California. This is an action for damages and such other and further relief as
23 may be consistent with law pursuant to 42 U.S.C. § 1983, to redress violations of the
24 decedent's rights protected by the United States Constitution, by persons acting under
25 color of law. This is also a survivor's action and one for wrongful death brought
26 pursuant to the Constitution, statutes and/or common law of the State of California.
27
28

PARTIES

4. Plaintiff Dora Solares is the next of kin and the successor-in-interest to
5 Luis Romero, deceased (“the decedent”). She is the mother of the decedent. The
6 decedent was never married, never had any domestic partner, nor children, and has no
7 other remaining family members or heirs who have standing to bring a cause of action
8 for wrongful death or a section 1983 survivor action. When Luis Romero was three
9 years old, and still living in Guatemala, Dora Solares divorced Luis Romero’s father.
10 Since that time, Dora Solares (and Luis Romero) have had no contact with the father.
11 Furthermore, Dora Solares and Luis Romero emigrated to the United States shortly
12 thereafter, and Luis Romero’s father remained in Guatemala, and to Plaintiff’s
13 knowledge the father never moved to the United States and has never entered the
14 United States. For these reasons it is not feasible to join him. Ms. Solares is a plaintiff
15 in both her individual capacity and as a successor-in-interest, entitled to seek relief as a
16 result of the unlawful and wrongful death of Luis Romero. This action is filed pursuant
17 to CCP §§ 337.60, 377.30, et al and a declaration is filed under CCP 377.32.

18 5. Defendant Ralph Diaz (“Diaz”), is the Secretary of the California
19 Department of Corrections and Rehabilitation (“CDCR”), and at the time of the
20 incident was the Acting Secretary of the CDCR. He is sued in his individual capacity.

21 6. Defendant Kenneth Clark (“Clark”), is the Warden of California State
22 Prison, Corcoran. He is sued in his individual capacity.

23 7. Defendant Joseph Burns (“Burns”), is a CDCR Sergeant who was
24 working at the California State Prison, Corcoran at the time of the incident. He is sued
25 in his individual capacity.

26 8. At all relevant times, Defendants Diaz and Clark, and each of them,
27 possessed the power and authority to adopt policies and prescribe rules, regulations,
28 and practices affecting all facets of the training, supervision, control, employment,
assignment and removal of individual employees of the CDCR, including those
individuals charged with protecting the health and safety of inmates at the California

1 State Prison, Corcoran, including decedent Luis Romero, and to assure that said
2 actions, policies, rules, regulations, customs, practices and procedures of the CDCR
3 and its employees and agents complied with the laws and constitutions of the United
4 States and the State of California.

5 9. Plaintiff is informed and believes, and thereupon alleges, that at all times
6 mentioned herein Defendants Burns, and Does 1 through 15, inclusive, worked and
7 resided in Kings County, State of California. Plaintiff is informed and believes, and
8 thereupon alleges, that at all times mentioned herein Defendants Burns and Does 1
9 through 15, inclusive, were employees, agents and/or servants of the CDCR, employed
10 at the California State Prison, Corcoran, and acted within the course and scope of said
11 employment, agency and/or service, and acted under color of state law.

12 10. Plaintiff is ignorant of the true names and capacities of defendants sued
13 herein as Does 1 through 15, inclusive, and therefore sues these defendants by such
14 fictitious names, in their individual capacities. Plaintiff is informed, believes and alleges
15 that each of the fictitiously named defendants is legally responsible, intentionally,
16 negligently, or in some other actionable manner, for the events and happenings
17 hereinafter referred to and described, and thereby illegally caused the injuries, damages,
18 and violations and/or deprivations of rights hereinafter alleged. Plaintiff will seek leave
19 of Court to amend this Complaint and state the true names and/or capacities of said
20 fictitiously named defendants when the same have been ascertained.

21 11. The reason why Plaintiff is ignorant of the true names and capacities of
22 Defendants sued herein as Does, inclusive, is that same have been unascertainable as of
23 the date of filing of this complaint, as many of these Does may be CDCR officers,
24 sergeants, lieutenants, captains, associate wardens, chief deputy wardens and/or
25 civilian employee agents, policy makers and representatives of the CDCR, or
26 employees, agents and representatives of the CDCR, and as such many of their records
27 are protected by state statute and can only reasonably be ascertained through the
28 discovery process. The individual defendants were at all times mentioned herein duly

1 appointed, qualified and acting officers of the CDCR, acting within the course and
2 scope of such employment with the CDCR, and acted under color of the statutes,
3 ordinances, regulations, policies, customs and usages of the State of California.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 12. Pursuant to Government Code § 910, Plaintiff presented a timely
6 appropriate claim for damages and a \$25 check for the required tort claim fee, on or
7 around September 3, 2019, less than six months after the incident. On September 12,
8 2019, the State of California cashed the \$25 check, representing the government tort
9 claim fee. This action is timely.

10 **FACTS**

11 **A. Defendants Bypass Standard Procedure and Place Luis Romero in Jaime
12 Osuna's Cell**

13 13. On or about March 7, 2019, CDCR inmate Luis Romero (Inmate #
14 H56733) was transferred from Mule Creek State Prison to California State Prison,
15 Corcoran (hereinafter, "Corcoran"). Corcoran prison officials, including defendant
16 CDCR Sergeant Joseph Burns, and Does, were required to go through a standardized
17 administrative committee process of matching two inmates in one cell, a process that is
18 described in Paragraph 15. Defendant Burns and Does chose to not follow this
19 standardized administrative committee process, and rushed to place Mr. Romero with
20 convicted murderer and single-celled inmate Jaime Osuna, despite knowing that Osuna
21 was a danger to anyone around him, as described in Paragraphs 16 and 17.

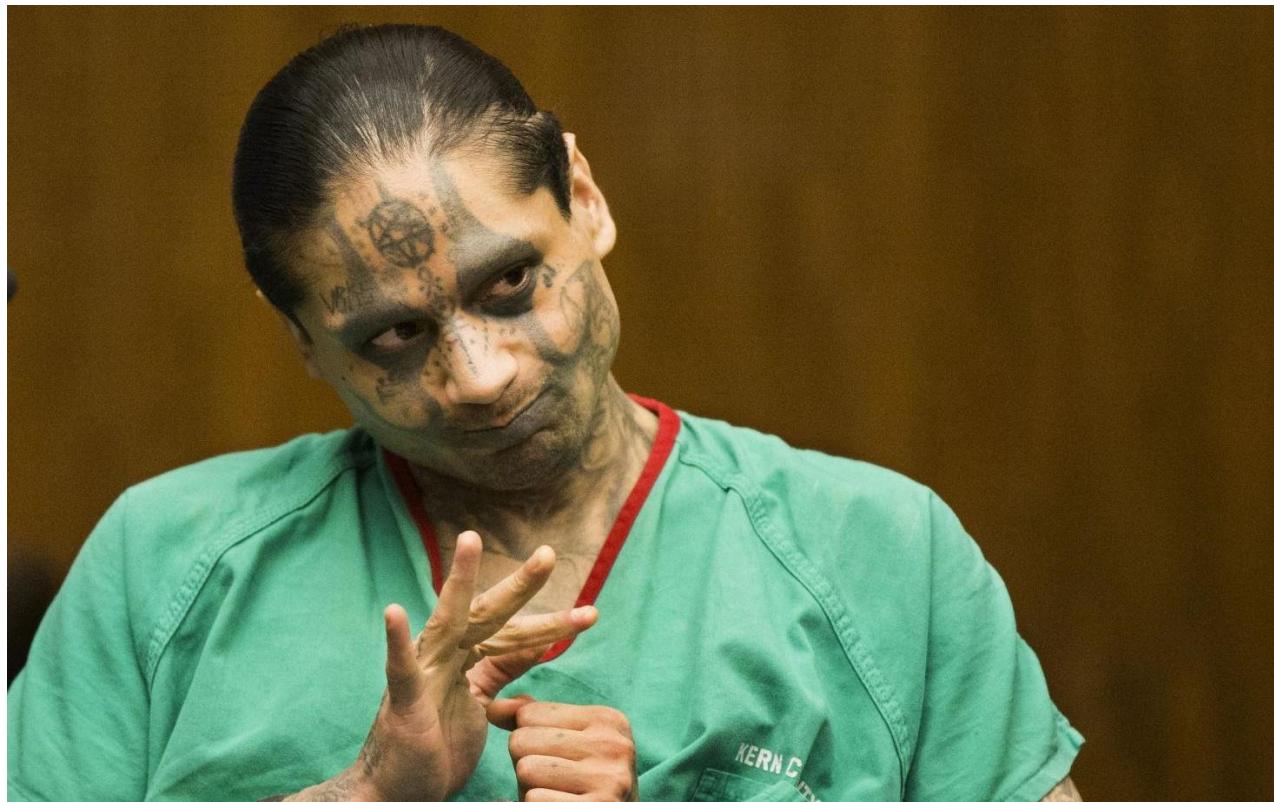
22 14. Normally, a committee of prison administrators must determine whether
23 an inmate is fit to have a cellmate. After making this determination, the committee
24 must find another inmate, and deem that inmate an appropriate fit as a cellmate. At
25 that point, the committee ensures the two inmates are introduced to each other, and
26 then has each inmate sign forms acknowledging and agreeing to be celled with
27 one another. Based on information and belief, CDCR never followed the standardized
28 administrative committee process with regards to housing Romero and Osuna together.

1 15. Defendants, including Burns, Clark and Diaz, were on notice that Jaime
2 Osuna posed a threat to other inmates and should not share a cell with anyone. Jail and
3 prison reports from Osuna's years behind bars document his violent misconduct and
4 establish that he was always single-celled. It is believed that since his CDCR
5 commitment in 2012, Osuna has never had a cellmate. Plaintiff is also informed that
6 CDCR was in possession of documents from Jaime Osuna's own lawyers and medical
7 team, warning CDCR of Osuna's propensity for extreme violence, insatiable desire to
8 kill, and need to be held in a psychiatric ward, not in a prison with other inmates.
9 Furthermore, defendants were on notice of Osuna's violent behavior while incarcerated
10 at the Kern County Jail awaiting trial in his original murder case, including one incident
11 that resulted in Osuna being charged with attempted murder. Defendants were on
12 notice that Osuna was serving a no-parole sentence for torture killing of a Bakersfield
13 woman in 2011. Defendants knew that Osuna posed a danger to anyone he shared a
14 cell, which is why he had never had a cell-mate at Corcoran before.

15 16. According to CDCR records, in 2012, a guard caught Jaime Osuna with a
16 five-inch metal shank. That same report describes Osuna has a high-risk inmate to be
17 housed in a secured single cell with no inmate contact. Shortly after the 2012 incident,
18 another guard found Jaime Osuna with a hatchet like weapon in his single cell and a
19 few months after that, despite being single celled, Jamie Osuna found his way into
20 another inmate's cell where Osuna stabbed and slashed the face of the inmate, resulting
21 in 67 stitches. When prison officials requested to photograph the inmate's injuries, he
22 declined, noting that he didn't want to risk Osuna getting copies of the photos and
23 adding them to his collection of "trophies." Prison reports from 2016 also list Osuna as
24 high-risk staff assaultive and an administrative segregated inmate. Thus, Osuna posed
25 an objectively homicidal risk to anyone with whom he shared a cell, and Defendants,
26 including Burns, Clark and Diaz, were on notice of this prior to Mr. Romero being
27 assigned to share a cell with Osuna. If Clark and Burns followed the administrative
28 committee process for inmates sharing a cell, and had ensured routine night-time safety

1 checks, especially after being put on notice of the danger posed by Osuna, they would
2 not have sent Romero to share a cell with Osuna overnight unprotected by correctional
3 officers, and Romero would not have been killed on March 8, 2019.

4 17. Defendants were on notice that Jaime Osuna had mental health issues and
5 was prone to violence:



19
20
21
22 18. Despite being put on notice that Osuna would kill again if placed in close
23 proximity to another inmate, and despite glaring evidence that Osuna was an inmate
24 who should not be housed with any other inmate, Defendant Burns and the Doe
25 defendants who also were responsible for implementing the standardized
26 administrative committee process, as well as Defendant Clark who was responsible for
27 supervising and approving the decisions of the administrative committee process, chose
28 to ignore the known risk of Osuna and placed Luis Romero in a cell with Jaime Osuna

1 within 24 hours of Romero arriving at Corcoran jail. Plaintiff alleges, based upon
2 information and belief, that Luis Romero had filed personnel complaints against Burns
3 and other Corcoran guards, including Does, and Burns' and Does' decision to not
4 follow the administrative committee process was animated in part to retaliate against
5 Mr. Romero. Upon information and belief, Plaintiff alleges that Defendant Burns is
6 one of the leaders in a gang of correctional officers at Corcoran known as "the
7 Greenwall," and other Doe defendant correctional officers answer to him, and are
8 referred to as "goons." Defendant Burns has history of coordinating inmate abuse, for
9 instance, extracting an inmate from a cell and hitting him over the head until the inmate
10 bled, and arranging for inmates to fight each other as correctional officers looked on.
11 In this case, Burns acted with others, the decision to bypass the normal committee
12 process could not have been made by one person alone, and defendant Does, along
13 with Burns, chose to ignore the known risk posed by Osuna and chose to not follow
14 the administrative committee process for Romero's placement.

15 19. As the warden of Corcoran, defendant Kenneth Clark is responsible for
16 ensuring that his subordinates follow the proper procedure for placing an inmate in the
17 cell of another inmate. In this case, Clark did not do so, instead, Clark effectively
18 "rubber-stamped" a dangerous decision he reasonably should have known would lead
19 to deprivations of Romero's Eighth Amendment rights. As described in Paragraphs 16-
20, Defendant Clark was on notice of the particular violent nature of Jaime Osuna but
21 took no steps to ensure that Osuna remained single-celled. Defendant Clark failed to
22 properly supervise defendants, including defendant Burns, to ensure that the
23 standardized administrative committee process was followed in this instance, and
24 instead approved and allowed the out-of-protocol decision to go forward. Defendant
25 Clark thus permitted Burns and Does to not follow the proper administrative
26 procedure for placing one inmate in the cell of another inmate, despite being put on
27 notice of the threat that Osuna posed to anyone with whom he shared a cell.
28 Furthermore, Defendants Clark and Diaz failed to establish a procedure to document

1 and track when inmates agree in writing to be housed with another, and failed to
2 supervise subordinates to ensure that a violent inmate never otherwise permitted to
3 share a cell was actually prevented from sharing a cell.

4 **B. Defendants Fail to Conduct Safety Checks**

5 20. After placing Luis Romero in harm's way by forcing him to share a cell
6 with Osuna, defendants Clark, Burns and Does then failed to conduct routine safety
7 check-ups, even when a bedsheet was impermissibly draped inside the cell. Normally, a
8 corrections officer is supposed to conduct nightly safety checks of each cell at least
9 every hour, and normally every twenty minutes. In addition, rules at Corcoran -- which
10 correctional officers are supposed to enforce -- prohibit inmates from obstructing the
11 view into their cell, and the draping of bedsheets or other materials in such a manner.

12 21. On the evening of March 8, 2019, however, defendants Clark, Burns and
13 Does did not enforce the normal rules, despite being put on notice of the danger that
14 Osuna posed to other inmates in general, and despite being aware of the fact that
15 Osuna had not been permitted to share a cell with anyone before. Moreover, Burns and
16 Doe defendants, correctional officers at Corcoran assigned to the cellblock that
17 Romero and Osuna were housed on the evening of March 8, 2019, affirmatively
18 worked together to ensure that correctional officers did not conduct any night-time
19 safety checks. Routine safety checks are supposed to occur at least every hour, and
20 normally every twenty minutes, and a guard station is located around 100 feet of the
21 cell that held Romero and Osuna. On March 8, 2019, Does, who are supervised by
22 Burns, colluded to ensure a number of highly unusual omissions: they never made any
23 safety checks for at least four hours; they did not order Osuna (or Romero) to take the
24 bedsheets down at any point in the night; the guard station on the cell-block was empty
25 during this time and no correctional officer responded to the loud noises. Doe
26 defendants' absence from required safety-checks was so prolonged and pronounced
27 that they heard no sounds that would indicate a violent attack was being committed
28 and that they should intervene, despite the loud noises in the cell that came from the

1 gruesome murder of Romero. The delay of nighttime safety checks was so severe that
2 Osuna had time to decapitate Romero, make a necklace of Romero's body parts, and
3 cover the cell in blood, all with a small razor. The prosecutor assigned to Mr. Romero's
4 murder calls it "probably the most unusual and gruesome case that I've had in my
5 career."¹ Defendants Clark and Burns also failed to supervise Doe defendants
6 responsible for conducting routine night-time safety checks, failed to require Doe
7 defendants to actually conduct routine night-time safety checks on the first night that
8 Romero was in a cell with Osuna, whom they knew had never been celled with another
9 inmate while in CDCR custody and who they knew posed a threat to other inmates,
10 and failed to establish a system that would ensure crucial nighttime safety checks were
11 actually conducted. Defendants Diaz, Clark and Burns also failed to train on these
12 above-issues, and were aware of the deficiencies in the training of the correctional
13 officers tasked with enforcing night-time safety checks and the rule against permitting
14 inmates to hang sheets in their cells to obstruct viewing into such cells. As a result,
15 hours passed without any CDCR official conducting any routine safety check, and in
16 this vacuum, Mr. Romero was brutally murdered.

17 22. Defendants Clark, Burns and Does were deliberately indifferent to a
18 substantial risk of serious harm to which Luis Romero was exposed. Such indifference
19 to which they were subjectively aware includes: choosing to ignore the proper
20 administrative procedure for placing one inmate with another, despite having been put
21 on notice that Jaime Osuna was a violent psychopath; affirmatively placing Mr. Romero
22 in a cell with Jaime Osuna, even though Mr. Osuna had not shared a cell with anyone
23 before at Corcoran because he had been identified as a violent psychopath who posed a
24 danger to fellow inmates; failing to ensure regular, night-time security checks of the cell
25 that housed Mr. Romero and Mr. Osuna, despite Mr. Osuna having been identified as a
26 violent killer who posed a danger to fellow inmates; and for Burns and the Doe
27 defendants who were the correctional officers on shift over the night, failing to make

28 ¹ Available at <https://abc30.com/5271416/>

regular checks despite a bedsheets draped inside Romero and Osuna's cell that evening, which visibly prevented proper monitoring and would have required the inmates to take it down, under Corcoran's own rules.

4 23. The autopsy performed around March 13, 2019, cited a litany of injuries,
5 which Luis Romero suffered even before his death. According to the medical examiner,
6 Luis Romero's spine was severed in the area of its first two segments. The cut-line was
7 irregular and the surrounding skin showed scattered abrasions, scratches, and clusters
8 of superficial stab wounds averaging a quarter inch in length. Romero's right ear was
9 removed by Jamie Osuna. Romero's eyes were forcibly detached by Osuna, and
10 Romero's left eye had been stabbed. Superficial scratches were seen on the right side of
11 Romero's face. Prominent lacerations extended laterally from Romero's right and left
12 side of his mouth approximately two and a half inches. A square-shaped incision was
13 made to Romero's left upper chest cavity measuring four inches by three inches. The
14 underlying rib segment was removed and Romero's left lung was removed in two parts.
15 Crime scene photos taken prior to Romero being removed from the cell showed
16 Romero's body had been posed in a way that if possible, made the full decapitation
17 even more shocking. Jamie Osuna had made a necklace for himself using Romero's
18 body parts and organs. Osuna was found with the murder weapon believed to have
19 been manufactured from a razor with a string around it.

DAMAGES

21 24. As a direct and proximate result of aforesaid acts and omissions, and the
22 customs, practices, policies and decisions of the defendants alleged in this complaint,
23 Plaintiff suffered and will continue to suffer great emotional, mental and physical pain
24 and injuries, anguish, fright, nervousness, anxiety, shock, humiliation, indignity,
25 embarrassment, harm to reputation, and apprehension, which have caused and will
26 continue to cause, Plaintiff to sustain general damages in a sum to be determined at
27 trial. Luis Romero suffered greatly before his eventual death at the hands of Osuna, and
28 his estate is entitled to damages stemming from pre-death pain and suffering.

1
2 25. As a direct and proximate result of the aforesaid acts, omissions, customs,
3 practices, policies and decisions of the aforementioned Defendants, Plaintiff suffered
4 the denial of her fundamental constitutional rights guaranteed by the Fourteenth
5 Amendments of the United States Constitution, which have caused Plaintiff to sustain
6 damages in a sum to be determined at trial.

7 26. As a further direct and proximate result of the aforesaid acts, omissions,
8 customs, practices, policies and decisions of the aforementioned Defendants, Plaintiff
9 incurred and/or will continue to incur medical expenses, including psychological
10 treatment.

11 27. As a further direct and proximate result of the aforesaid acts, omissions,
12 customs, practices, policies and decisions of the aforementioned Defendants, Plaintiff
13 suffered past and future losses of income that have caused her to sustain economic
14 damages in a sum to be determined at trial.

15 28. Defendant Burns and individual Doe defendants acted in a manner that
16 was willful, wanton, malicious and oppressive, with reckless disregard of or in
17 deliberate indifference to and with the intent to deprive the decedent of his
18 constitutional rights, and did in fact violate the aforementioned rights, entitling Plaintiff
19 to exemplary and punitive damages in an amount to be proven at the trial in this
20 matter. Plaintiff also seeks attorneys' fees.

FIRST CLAIM FOR RELIEF

Violation of Civil Rights – 42 U.S.C. § 1983

Conditions of Confinement – 8th Amendment

(Against Defendants Clark, Burns and Does 1 through 15)

25 29. Plaintiff incorporates by reference each and every allegation contained in
26 the foregoing paragraphs as if re-alleged herein.

27 30. Luis Romero faced substantial risk of serious harm when he was forced
28 by Defendants Clark, Burns and Doe defendants to share a cell overnight with Osuna,

1 and when they failed to ensure that routine cell-checks were conducted, and failed to
2 enforce rules against bedsheets in the cells to prevent visibility from the outside.

3 31. Defendants Clark, Burns and Doe defendants were deliberately indifferent
4 to a substantial risk of serious harm to which Luis Romero was exposed while in the
5 same cell as Osuna, in that they knew of it and disregarded it by failing to take
6 reasonable measures to address it.

7 31. As a direct and proximate result of Defendants' conduct, in acting to put
8 Romero in the same cell as Osuna and failing to act to protect him once in that cell,
9 Clark, Burns and Doe defendants caused harm to Romero and plaintiff was damaged as
10 alleged herein above.

11 32. The aforementioned misconduct of the named defendants was of such an
12 egregious nature that it entitles the plaintiffs to an award of exemplary and punitive
13 damages according to proof and as permitted by law.

SECOND CLAIM FOR RELIEF

Violation of Civil Rights – 42 U.S.C. § 1983

Failure to Protect Inmate – Eighth Amendment

(Against Defendants Clark, Burns and Does 1 through 15)

18 33. Plaintiff incorporates by reference each and every allegation contained in
19 the foregoing paragraphs as if re-alleged herein.

34. Defendants Clark, Burns and Doe defendants, while acting under color of
law, deprived Luis Romero, Plaintiff's son, of his civil rights under the Eighth
Amendments to the United States Constitution.

23 35. Defendants Clark, Burns and Doe defendants, while acting under color of
24 law, deprived Luis Romero, Plaintiff's son, of his civil rights under the Eight
25 Amendment to the United States Constitution when they made intentional decisions
26 with respect to the conditions under which Romero was confined, as described above.
27 These decisions put Romero in substantial risk of suffering serious harm.

36. At all times relevant here, Defendants Clark, Burns and Doe defendants

1 did not take reasonable available measures to abate the substantial risk of harm to
2 Romero. These defendants knew of the high degree of risk that Romero faced while in
3 the same cell as Osuna, and disregarded it. Indeed, Clark and Burns and Doe
4 defendants were aware of the risk that Osuna posed to any other inmate in close
5 proximity to him, and chose to ignore standard administrative procedure in placing
6 Romero in a cell with him, and that very first evening, failed to ensure that routine cell-
7 checks were conducted, and failed to enforce rules against bedsheets in the cells to
8 prevent visibility from the outside. The consequences of each of these decisions was
9 obvious and constituted deliberate indifference Romero's serious safety needs.

10 37. As a proximate result of the conduct of Clark and Burns and Doe
11 defendants 1 through 15, in particular, by not taking such measures as described above,
12 Plaintiff suffered injuries and damages set forth herein, including great physical pain
13 and emotional distress up to the time of his death, loss of enjoyment of life, loss of life,
14 and loss of earning capacity.

15 38. The conduct of Clark, Burns and Doe defendants 1 through 15 was
16 willful, wanton, malicious, and done with reckless disregard for the rights and safety of
17 decedent and therefore warrants the imposition of exemplary and punitive damages as
18 to Defendants.

19 39. Defendants Clark and Burns and Doe defendants 1 through 15 are liable
20 to Plaintiff for the decedent's injuries and death, either because they were integral
21 participants in the wrongful actions that led to Luis Romero being placed alone in a
22 cell, unsupervised, with a violent psychopath.

23 40. Plaintiff brings this claim both individually and as a successor-in-interest
24 to decedent. Plaintiff seeks survival damages, including for the nature and extent of
25 decedent's injuries, pre-death pain and suffering, emotional distress, and loss of life and
26 enjoyment of life, as well as wrongful death damages under this claim. Plaintiff also
27 seeks attorney's fees.

28

THIRD CLAIM FOR RELIEF

Supervisory Liability

(42 U.S.C. § 1983; 8th and 14th Amendments)

(Against Defendants Diaz, Clark, Burns and Does 11-15)

41. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs as if re-alleged herein.

7 42. Defendants Clark, Burns and Does 11-15 acted in a supervisory capacity
8 under color of law.

9 43. The acts and failures of Clark, Burns and Does 11-15 were a cause of the
10 murder of Luis Romero, which deprived Luis Romero of his rights under the Eighth
11 Amendment, as alleged above.

12 44. Defendants Clark and Does 11-15 knew of the decision to place Romero
13 in Osuna's cell and approved it, thereby knowingly refusing to terminate acts of his
14 subordinates (Burns and Does) that he knew or reasonably should have known would
15 cause the subordinates to deprive Romero of his eighth amendment rights, and
16 furthermore, Defendant Clark knew that his subordinates (Burns and Does) were
17 engaging in these acts to place Romero in Osuna's cell, and also Defendant Clark knew
18 that his subordinates (Clark and Does) were engaging in acts to place Romero in
19 Osuna's cell and knew or reasonably should have known that the subordinate' conduct
20 would deprive Romero of these rights.

21 45. Defendants Burns and Does 11-15, as supervisors for other Does, the
22 correctional officers on shift the night that Romero was murdered, knew that his
23 subordinates did not follow protocol and knew that they did not conduct regular,
24 scheduled safety checks of the inmates' cells during the night, and did not enforce the
25 rules against sheets being hung up inside cells to obstruct viewing into said cells, and
26 therefore Burns knew or reasonably should have known that the subordinates' conduct
27 would deprive Romero of his Eighth Amendment rights.

28 || 46. Defendants Diaz, Clark and Burns and Does 11-15, as supervisors,

1 disregarded the known or obvious consequences that deficiencies in training
2 correctional officers to conduct regularly scheduled night-time cell checks and
3 enforcing the rule against sheets hung up inside a cell to obstruct views into it, and
4 these deficiencies in night-time safety checks would cause their subordinates to violate
5 the Romero's constitutional rights.

6 47. The conduct of Defendants Clark, Burns and Does 11-15, as described
7 above, were so closely related to the deprivation of Romero's constitutional rights as to
8 be the moving force behind permitting Romero to be placed in a cell with Osuna
9 overnight, and for Romero to be left unsupervised and unprotected for the entire night,
10 which culminated in Romero's murder.

11 48. Defendants Clark, Burns and Does 11-15 engaged in conduct that showed
12 a reckless or callous indifference to the deprivation by their subordinates of the rights
13 of others.

FOURTH CLAIM FOR RELIEF

Loss of Familial Relations

(42 U.S.C. § 1983; 14th Amendment)

(Against All Defendants)

18 49. Plaintiff incorporates by reference each and every allegation contained in
19 the foregoing paragraphs as if re-alleged herein.

20 50. The individual defendants each violated Plaintiff's constitutional
21 rights by committing the misconduct set forth hereinabove in Claims for Relief One
22 through Three. The defendants' above-alleged misconduct constituted deliberate
23 indifference of Luis Romero's serious safety needs.

24 51. As a direct and proximate result of the aforementioned actions and
25 omissions, Plaintiff was deprived of her son and suffered the injuries and damages as
26 alleged herein above. The liberty interests Plaintiff as a mother is well-recognized as
27 Fourteenth Amendment substantive due process rights.

28 52. The conduct of the individual defendants and Doe defendants 1 through

1 15 was willful, wanton, malicious, and done with reckless disregard for the rights and
2 safety of decedent and therefore warrants the imposition of exemplary and punitive
3 damages as to Defendants.

4 **FIFTH CLAIM FOR RELIEF**

5 **Conspiracy to Violate Civil rights**

6 **42 U.S.C. § 1983**

7 **(Against Defendants Clark, Burns and Does 1-15)**

8 53. Plaintiff incorporates by reference each and every allegation contained in
9 the foregoing paragraphs as if re-alleged herein.

10 54. This cause of action arises under United States Code, Title 42, Sections
11 1983, 1985, and 1988, wherein Plaintiff seeks to redress a deprivation under color of
12 law of a right, privilege or immunity secured by the Eighth and Fourteenth
13 Amendments to the United States Constitution.

14 55. Defendants Clark, Burns and Does 1-15, and each of them:

- 15 (a) had a joint and simultaneous duty to make sure that Luis Romero was
16 physically safe while incarcerated at Corcoran;
- 17 (b) had joint and simultaneous knowledge that Luis Romero was at risk of
18 being harmed by another inmate;
- 19 (c) with such duty, knowledge and a meeting of the minds, defendants
20 took action at the same time and in the same place to collaborate to refuse
21 to protect Luis Romero from Jaime Osuna, in particular, by bypassing
22 normal procedure and placing Romero in a cell with Osuna and then not
23 conducting routine night-time safety checks into that cell. Thus, these
24 defendants formed a ‘pact of denial’ such that not a single one of them
25 did anything to intervene on Mr. Romero’s behalf or prevent the harm of
26 which was plainly foreseeable by Osuna’s past record of violence;
- 27 (d) acted as described herein above, in conspiracy with, and with the
28 agreement permission, ratification, and approval of, each other to violate

1 Mr. Romero's and Plaintiff's civil rights as stated herein.

2 56. As a direct and proximate result of the aforementioned acts, omissions
3 and deliberate indifference of each of the defendants, Plaintiff and Luis Romero were
4 harmed.

5 57. Plaintiff brings this claim both individually and as a successor-in-interest
6 to decedent. Plaintiff seeks survival damages, including for the nature and extent of
7 decedent's injuries, pre-death pain and suffering, emotional distress, and loss of life and
8 enjoyment of life, as well as wrongful death damages under this claim. Plaintiff also
9 seeks attorney's fees.

10 **SIXTH CLAIM FOR RELIEF**

11 **Negligent Supervision, Training and Staffing**

12 **Cal. Civil Code 1714, Cal. Gov. Code § 844.6(d)**

13 **(Against All Individual Defendants and Does 1-15)**

14 58. Plaintiff incorporates by reference each and every allegation contained in
15 the foregoing paragraphs as if re-alleged herein.

16 59. Defendants Diaz, Clark and Burns failed to supervise the process by
17 which it was determined that Luis Romero should be placed in a cell with Jaime Osuna,
18 and failed to supervise the process by which routine, nighttime safety checks of Luis
19 Romero's cell were to be conducted. These defendants allowed Romero to be housed
20 with Osuna, failed to impress upon their subordinates of the high-risk placement, and
21 failed to ensure that their subordinates conducted regular safety checks, as normally
22 required. As a result, Romero was forced into a cell with the psychopathic Osuna, left
23 unprotected and unsupervised for an entire night, and was killed as a result.

24 60. Individual defendants and Does 1-15 herein, agents, servants, and/or
25 employees of County, and within the course and scope of such agency, service, and/or
26 employment, and under color of authority, were negligent in regards to Luis Romero's
27 health, safety and welfare, and breached that duty of care.

28 61. As a result, Luis Romero was injured and killed. Plaintiff brings this claim

1 both individually and as a successor-in-interest to decedent.

2 **SEVENTH CLAIM FOR RELIEF**

3 **Wrongful Death**

4 **(California Code of Civil Procedure 377.60 et seq.)**

5 **(Against All Individual Defendants and Does 1-15)**

6 62. Plaintiff incorporates by reference each and every allegation contained in
7 the foregoing paragraphs as if re-alleged herein.

8 63. The named defendants have committed intentional or negligent
9 misconduct that caused the untimely and wrongful death of decedent Luis Romero and
10 deprived Plaintiff of her son.

11 64. As a direct and proximate result of this misconduct, Plaintiff suffered the
12 injuries and damages as alleged hereinabove

13 65. These injuries and damages are compensable under California law.

14 **EIGHTH CLAIM FOR RELIEF**

15 **Failure to Summon Medical Care**

16 **Cal. Gov't. Code § 845.6**

17 **(Against Defendant Does 1-15)**

18 66. Plaintiff incorporates by reference each and every allegation contained in
19 the foregoing paragraphs as if re-alleged herein.

20 67. While in the cell he was forced to share with Jaime Osuna, Luis Romero
21 was violently attacked. Defendant Does failed to conduct timely safety checks, failed to
22 order the draped bedsheets obstructing any view into the cell to come down, and failed
23 to be within earshot or eyeshot of Romero and Osuna's cell. In the moments that Mr.
24 Romero was attacked by Osuna, but before Mr. Romero died, Defendant Does failed
25 to provide necessary medical care that would have prevented Mr. Romero's death.

26 68. Doe defendants, herein agents, servants, and employees of the CDCR,
27 and within the course and scope of that agency, service, and/or employment, and
28 under color of authority, failed to take reasonable action to summons medical care for

1 Mr. Romero, despite having reason to know that he was in need of immediate medical
2 care, in violation of Cal. Gov't Code § 845.6.

3 69. As a result, plaintiff's injuries worsened, and without timely medical
4 treatment, he died.

5 | 70. As a result, Mr. Romero sustained the injuries and damages alleged herein.

PRAYER FOR RELIEF

7 | WHEREFORE, Plaintiff prays for relief as follows against defendants:

8 1. General and Special damages, including both survival and wrongful death
9 damages, in an amount according to proof;

10 2. Exemplary and punitive damages against each individual and Doe
11 defendant, in amounts according to proof;

12 4. Cost of suit, including attorneys' fees, under 42 U.S.C. § 1988; and

13 5. Such other relief as may be warranted or as is just and proper.

LAW OFFICES OF JUSTIN STERLING

16 | DATED: June 8, 2020

By: /s/ Justin Sterling
Justin Sterling
Attorney for Plaintiff,
DORA SOLARES

LAW OFFICES OF ERIN DARLING

24 | DATED: June 8, 2020

By: /s/ Erin Darling
Erin Darling
Attorney for Plaintiff,
DORA SOIARES

1
2 **JURY DEMAND**
3

4 Plaintiff Dora Solares hereby demands trial by jury on all issues so triable.
5

6 **LAW OFFICES OF JUSTIN STERLING**
7

8 DATED: June 8, 2020
9

10 By: /s/ Justin Sterling
11 Justin Sterling
12 Attorney for Plaintiff,
13 DORA SOLARES
14

15 **LAW OFFICES OF ERIN DARLING**
16

17 DATED: June 8, 2020
18

19 By: /s/ Erin Darling
20 Erin Darling
21 Attorney for Plaintiff,
22 DORA SOLARES
23